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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/084,395

02/25/2002

Claude Andre

408.106A

6873

20311

7590

10/06/2006

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EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/084,395

Applicant(s)

ANDRE ET AL.

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-15 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-15 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-10, 12-15 and 20 are presented for reconsideration on the merits.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 21, 2006, has been entered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 is rejected under 35 U.S.C. 102(b) as anticipated by WO 92/10175 (WO), cited of record.

Claims are drawn to a composition comprising amino acids in lyophilized form.

WO teaches a composition a composition comprising amino acids in lyophilized form. The amino acids are in particulate form with a particle size less than 250 um.

Note the abstract and page 4, lines 24-30 and page 5, lines 1-2. Also note Table 1, page 6, lines 5-20.

The claims are identical to the disclosed subject matter and are therefore considered to be anticipated by the teachings therein.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Claim Rejections - 35 USC § 103***

Claims 2-3, 5-10, 12-15 and 20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over WO, cited above in view of Rodriguez et al, Singh, Yi et al and Miyamoto et al, all cited of record on previously submitted PTO-892/PTO-1449 Form(s).

Claims are further drawn to grinding amino acids in proportional amounts of at least 50%, reproducing a spectrum of amino acids that make up keratin or the stratum corneum, shrimp eggs or soya. Further, the medium comprises yeast, calcium chloride, magnesium sulfphate, sodium hydroxide, potassium chloride and potassium hydroxide. Further, the mites can be selected from Dermatophagoids pteronyssinus and Blomia tropicalis.

WO teaches a composition a composition comprising amino acids in lyophilized form. The amino acids are in particulate form with a particle size less than 250 um. Note the abstract and page 4, lines 24-30 and page 5, lines 1-2. Also note Table 1, page 6, lines 5-20.

Rodriguez et al teach a medium for cultivating a producing mites comprising amino acids in lyophilized form. See the abstract and page 979, last 8 lines and page 981, lines 4-6. Also note Table 2, page 983. They further teach tyrosine, cysteine, glutamic acid.

Singh teaches salts such as calcium chloride, magnesium sulfphate, sodium hydroxide, potassium chloride and potassium hydroxide, and further teaches the presence of vitamins and biotin, see page 483, lines 11-20.

Yi et al and Miyamoto et al clearly teach *Dermatophagoides pteronyssinus* and *Blomia tropicalis*. See pages 133, line 2 and 189, line 1 respectively.

The claims differ from WO in that specific amino acids, salts, biotin, etc. are not disclosed and neither are the specific species of mites.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to cultivate mites on a medium containing amino acids, lyophilized amino acids in the amounts set forth by WO in view of Rodriguez et al and further to include the salts as disclosed by Singh to cultivate the mites as disclosed by Chew et al and Miyamoto et al. Clearly one of skill in the art would have been motivated to select for these amounts and amino acids, salts, mites because the prior art teaches successful results have been obtained. Therefore, in the absence of persuasive evidence to the contrary and absence of unexpected successful results the claims are deemed *prima facie* obvious over the cited prior art.

### ***Response to Arguments***

Applicant's arguments filed May 2, 2006, have been fully considered but they are not persuasive. The arguments regarding the deficiencies of Rodriguez et al are noted, however, this reference has been removed as a primary reference and WO is a new primary reference cited against the newly entered claims. Therefore, these arguments are moot because they do not address the newly combined references for the instant art rejection. Rodriguez et al does teach specific amino acids which are not disclosed by WO, specifically tyrosine, glutamic acid and cysteine.

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Thus, to select for these amino acids is a matter of judicious selection and well within the purview of an artisan. The medium as claimed herein only requires a plurality of lyophilized amino acids. The cited reference(s) applied against the claims and set forth above, clearly teaches a plurality of lyophilized amino acids comprised of a mixture in particulate form, and the same useful for cultivating mites. The amino acids may be obtained commercially as well, and the diet contains salts.

It is believed by the Examiner that the WO reference in light of the newly entered amended claims is closer prior art to the claimed composition and Rodriguez et al is relied upon as a secondary reference. Applicants should further note that the mites are not required by the present claims to be in the composition. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore, in the absence of persuasive evidence to the contrary and absence of unexpected successful results the claims remain *prima facie* obvious over the cited prior art.

### ***Conclusion***

All claims fail to be patentably distinguishable over the state of the art discussed above. Therefore, the claims are properly rejected.

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

  
**DEBORAH K. WARE**

**PATENT EXAMINER**

Deborah K. Ware

September 30, 2006